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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 DISH NETWORK L.L.C.,

20 Plaintiff,

21 v.

22 JADOO TV, INC. et al.,

23 Defendants.

Case No. 2:18-cv-9768-FMO (KSx)

**PLAINTIFF DISH NETWORK L.L.C.'S
EX PARTE APPLICATION TO
MODIFY SCHEDULING ORDER**

Honorable Fernando M. Olguin

[Ferguson Decl. in Support of Ex Parte
Application and Proposed Order Filed
Concurrently]

1 Plaintiff DISH Network L.L.C. (“DISH”) submits this ex parte application and
 2 respectfully requests that the Court modify the Scheduling Order (Dkt. 50), as
 3 amended by the Order Regarding Further Proceedings (Dkt. 101), by continuing the
 4 case deadlines because of the ongoing bankruptcy stay as to JadooTV, related
 5 informal standstill agreement as to Sohail, and extensive outstanding discovery.
 6 DISH has moved to lift the stay as to JadooTV and anticipates it and the informal
 7 standstill as to Sohail will be lifted during a hearing with the bankruptcy court on
 8 January 8, 2020. Defendants Jadoo TV, Inc. (“JadooTV”) and Sajid Sohail (“Sohail”)
 9 do not oppose the Court resetting the deadline for fact discovery to April 8, 2020, and
 10 adjusting the other deadlines accordingly. (Ferguson Decl. ¶ 22.)

11 The only dispute is the deadline for mediation and DISH’s position is set forth
 12 in Section III.C, wherein DISH requests that the Court also reset the deadline for
 13 mediation to April 8, 2020. (*Id.*)

14 I. PROCEDURAL HISTORY

- 15 1. The modified Scheduling Order includes the following case deadlines:
 - 16 a. Completion of fact discovery: December 9, 2019;
 - 17 b. Completion of settlement conference: December 9, 2019;
 - 18 c. Initial expert witness disclosures: December 23, 2019;
 - 19 d. Rebuttal expert witness disclosures: January 23, 2020;
 - 20 e. Completion of expert discovery: February 24, 2019;
 - 21 f. Dispositive motions: March 24, 2020;
 - 22 g. Memoranda of Contentions of Fact and Law; Witness Lists;
 - 23 Pretrial Exhibit Stipulation; Joint Motions in Limine: May 22,
 - 24 2020;
 - 25 h. Proposed Pretrial Conference Order; Joint Jury Instructions;
 - 26 Disputed Jury Instructions; Joint Proposed Verdict Form; Joint
 - 27 Statement of the Case; Proposed Additional Voir Dire Questions;
 - 28 Reply Memoranda to Motions in Limine: May 29, 2020;

i. Final pretrial conference: June 12, 2020; and

j. Trial: June 30, 2020.

(Dkt. 101 at 1-2.)

2. This is the second request to continue the case deadlines. (Ferguson Decl. ¶ 21.) The Court granted the parties' Stipulation and Joint Motion to Modify the Scheduling Order (Dkt. 100) pursuant to an Order Regarding Further Proceedings entered August 28, 2019 (Dkt. 101). Pursuant to this order, the case deadlines in the Scheduling Order (Dkt. 50) were continued for approximately three months. (Ferguson Decl. ¶ 21; *see* Dkt. 50 at 17-18; Dkt. 101 at 1-2.)

II. LEGAL STANDARD

3. "A schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Johnson v. Mammoth recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "The district court may modify the pretrial schedule if it cannot reasonably be met despite the diligence of the party seeking the extension." *Id.*

III. GOOD CAUSE TO MODIFY SCHEDULING ORDER

A. Status of JadooTV's Bankruptcy

4. JadooTV filed a Chapter 11 bankruptcy petition on May 31, 2019. (Ferguson Decl. ¶ 1; Dkt. 78.)

5. On August 19, 2019, DISH filed a Motion for Relief from Stay in the bankruptcy court, seeking to lift the automatic stay as to JadooTV. (Ferguson Decl. ¶ 2.)

6. On August 30, 2019, JadooTV filed an adversary proceeding against DISH in the bankruptcy court, including a Motion for Preliminary Injunction and Temporary Restraining Order, seeking to extend the bankruptcy stay to Sohail. (Ferguson Decl. ¶ 3.)

1 7. On October 8, 2019, the bankruptcy court entered an order with respect
2 to DISH's Relief from Stay Motion and JadooTV's Motion for Preliminary
3 Injunction. Pursuant to this order:

- 4 a. this action is stayed as against JadooTV, other than such discovery as
5 JadooTV agrees to produce or the bankruptcy court orders JadooTV
6 to produce;
- 7 b. DISH agreed to an informal standstill with regard to litigation of the
8 claims against Sohail in this action";
- 9 c. the stay against JadooTV and informal standstill against Sohail are
10 conditioned upon JadooTV filing a plan of reorganization by no later
11 than December 31, 2019; and
- 12 d. a status conference is set with the bankruptcy court on January 8, 2020
13 to determine whether the stay as to JadooTV and informal standstill
14 with respect to Sohail should be extended or terminated.

15 (Ferguson Decl. ¶ 4, Ex. 1 at ¶¶ 1-3.)

16 **B. Status of Discovery**

17 8. DISH has been diligent in conducting discovery. (Ferguson Decl. ¶¶ 5-
18 15, 17-20.)

19 9. On August 14, 2019, the Court granted DISH's motion to compel
20 Sohail's production of documents, and awarded DISH \$12,046.12 in expenses finding
21 Sohail's failure to produce discovery was unjustified. (Ferguson Decl. ¶ 13; Dkts. 96,
22 118.) Sohail provided supplemental responses to DISH's requests for production on
23 August 26, 2019, and for each request stated:

24 After a reasonable and diligent search of his personal email accounts or
25 other electronically stored databases, home offices or other locations
26 and/or repositories that are separate from facilities owned and/or
27 controlled by JadooTV, Sohail responds that he does not have any non-
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1 privileged documents in his possession, custody, or control that are
2 responsive to this request.

3 (Ferguson Decl. ¶ 14, Ex. 2.) Sohail did not produce any documents pursuant to the
4 Court's order granting DISH's motion to compel Sohail's production of documents,
5 and Sohail has not produced any documents in this action. (*Id.*)

6 10. The bankruptcy court is permitting limited discovery to proceed against
7 JadooTV. (Ferguson Decl. ¶ 15.) JadooTV produced its first 10 documents in this
8 action on October 9 and October 10, 2019. (*Id.*) JadooTV produced additional
9 documents on November 8 and November 12, 2019. (*Id.*)

10 11. DISH cannot reasonably meet the case deadlines due to the automatic
11 stay as to JadooTV, informal standstill agreement as to Sohail, and extensive
12 outstanding document production from JadooTV and non-parties. (Ferguson Decl. ¶
13 20.) Defendant Haseeb Shah's ("Shah") motion to dismiss is also under submission.
14 (*Id.*; Dkts. 74, 88.)

15 **C. The Court Should Continue the Mediation Deadline.**

16 DISH's position has always been that mediation should be scheduled after fact
17 discovery has been completed. (Dkt. 41 at 11:15-18.) On two prior occasions, the
18 Court agreed that the deadlines for the completion of mediation and fact discovery
19 should be the same. (Dkt. 50 at 10, 18-19; Dkt. 101 ¶¶ 2, 4.) Mediation is premature
20 and should be continued because: (1) JadooTV and Sohail have failed to produce
21 necessary documents; (2) JadooTV's pending bankruptcy has stayed this action as to
22 JadooTV; and (3) a necessary Defendant will not be participating.

23 Mediation is premature because of JadooTV and Sohail's own actions,
24 including: (1) failure to produce any documents requiring DISH to file a motion to
25 compel; (2) JadooTV filing bankruptcy a week after DISH filed its motion to compel;
26 (3) Sohail's failure to produce any documents in response to the Court's order
27 compelling his production; and (4) JadooTV's limited production during the
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1 bankruptcy stay. (Ferguson Decl. ¶¶ 1, 12-15.) DISH does not have sufficient
2 documents to have a meaningful mediation.

3 Mediation is also premature because of JadooTV's pending bankruptcy. DISH
4 has filed a Motion for Relief from Stay, however the bankruptcy court is temporarily
5 keeping the stay in place apart from some limited document production while
6 JadooTV seeks funding in order to file a proposed Chapter 11 plan. (Ferguson Decl.
7 ¶ 4, Ex. 1.) The bankruptcy Court has set December 31, 2019, as the deadline for
8 JadooTV to file its proposed plan, and has set a status conference on January 8, 2020,
9 to discuss the plan and whether the stay should lift at that time. (*Id.*)

10 Finally, mediation is premature because neither Defendant Shah, nor his
11 counsel, will be participating, presumably because of Shah's pending motion to
12 dismiss.¹ (*See* Ferguson Decl. ¶ 16, Ex. 3; Dkts. 74, 88.) Shah is a necessary party to
13 mediation because he is the direct copyright infringer and JadooTV and Sohail's agent
14 providing Jadoo users in the United States with access to DISH's Protected Channels
15 and the content that airs on the Protected Channels. (Dkt. 1 ¶¶ 4, 9, 48-50, 52, 63-71;
16 Dkt. 81 at 18:1-21:6.) DISH does not believe mediation will be successful without
17 the participation of Shah.

18 The Court should continue the mediation deadline to April 8, 2020 – the
19 requested deadline for the completion of fact discovery.

20 IV. CONCLUSION

21 There is good cause to modify the Scheduling Order because of the bankruptcy
22 stay as to JadooTV, the related standstill agreement as to Sohail, and the extensive
23 outstanding discovery. DISH respectfully requests that the Court modify the
24 Scheduling Order to set the following case deadlines:

- 25 a. Completion of fact discovery: April 8, 2020 (three months after the
26 January 8, 2020 bankruptcy court hearing in which DISH anticipates
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28 ¹ Sohail paid Shah's legal fees to draft and file Shah's motion to dismiss. (Dkt. 74-1
¶ 39.)

the stay as to JadooTV and informal standstill agreement as to Sohail will be lifted);

- b. Completion of settlement conference: April 8, 2020;
- c. Initial expert witness disclosures: April 22, 2020;
- d. Rebuttal expert witness disclosures: May 22, 2020;
- e. Completion of expert discovery: June 22, 2020;
- f. Dispositive motions: July 22, 2020;
- g. Memoranda of Contentions of Fact and Law; Witness Lists; Pretrial Exhibit Stipulation; Joint Motions in Limine: September 25, 2020;
- h. Proposed Pretrial Conference Order; Joint Jury Instructions; Disputed Jury Instructions; Joint Proposed Verdict Form; Joint Statement of the Case; Proposed Additional Voir Dire Questions; Reply Memoranda to Motions in Limine: October 2, 2020;
- i. Final pretrial conference: October 16, 2020; and
- j. Trial: November 3, 2020.

The parties' conferred numerous times via email, in person, and by telephone concerning this request to continue the case deadlines. (Ferguson Decl. ¶ 22.) JadooTV and Sohail agree to continue the case deadlines as proposed above, excluding the mediation deadline, which is currently December 9, 2019. (*Id.*)

Pursuant to Local Rule 7-19, the name, address, telephone number, and email address of counsel for the opposing party is:

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1 Dated: November 13, 2019 Respectfully submitted,

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